

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AIMEE POTTER,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

TARGET CORPORATION,

Defendant.

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: Case No. 1:21-cv-05496
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: Hon. Elaine E. Bucklo
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**DEFENDANT TARGET CORPORATION’S MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)**

Defendant Target Corporation (“Target”), by and through its undersigned counsel, Blank Rome LLP, hereby moves this Court to enter an Order dismissing Plaintiff Aimee Potter’s (“Plaintiff”) *Class Action Complaint* (the “Complaint”), alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim. In support of this Motion, Target states as follows:

1. Plaintiff filed her original *Complaint* on September 10, 2021, in the Circuit Court of Cook County. *See* ECF No. 1-2. Target removed the action to this Court on October 15, 2021. Notice of Removal, ECF No. 1.

2. Target brought an *Unopposed Motion for Extension of Time to Answer or Otherwise Plead* on October 19, 2021. *See* ECF No. 7. The Court granted that Motion on October 21, 2021. *See* ECF No. 9. Target then brought a *Second Unopposed Motion for Extension of Time to Answer or Otherwise Plead* on November 15, 2021. *See* ECF No. 10. The Court granted

Targets' second unopposed motion on November 17, 2021, providing Target until December 20, 2021, to respond to the Complaint. *See* ECF No. 11.

3. Target now brings this *Motion to Dismiss Pursuant to Rule 12(b)(6)* of the Federal Rule of Civil Procedure for Plaintiff's failure to state a claim for relief. By separate motion, Target additionally brings a *Motion to Compel Arbitration, Transfer Venue, or Dismiss* pursuant to an arbitration agreement and forum selection clause in Target's Terms and Conditions ("T&Cs"). *See* ECF No. 13.

4. Plaintiff's Complaint arises out of her purported use of the virtual try-on feature available on Target's website and smartphone application (the "VTO") feature which Plaintiff erroneously alleges uses facial recognition technology.

5. Plaintiff's Complaint is legally deficient because BIPA, an Illinois statute, does not apply to Plaintiff's claims. Pursuant to Plaintiff's agreement to online T&Cs, Plaintiff agreed to have the laws of Minnesota govern "all disputes" relating to her use of Target's website and smartphone application and "arising out of or related to" the T&Cs. Plaintiff's Complaint alleges no violation of any Minnesota law.

6. Even if Illinois law did apply, Plaintiff's Complaint is factually deficient because it fails to plausibly allege Target violated BIPA in connection with its VTO feature. Instead, the allegations are conclusory and merely parrot BIPA's statutory language, which is insufficient to state a claim as a matter of law under Rule 12(b)(6).

7. Dismissal of Plaintiff's *Complaint* should be with prejudice.

8. In support of this Motion, Target files herewith its Memorandum of Law in Support of its Motion to Dismiss, which is fully incorporated herein.

9. Target understands the Motion to Dismiss Pursuant to Rule 12(b)(6) will be opposed.

WHEREFORE, Defendant Target Corporation moves this Court for an Order dismissing this action alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* in its entirety and with prejudice, and for all such other relief as the Court deems just and proper.

DATED: December 20, 2021

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